



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 31049640

Date: AUG. 23, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an entrepreneur, seeks classification as an individual of extraordinary ability in business. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets at least three of the classification's initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner is an entrepreneur who seeks to continue his business activities in the United States. Because he has not indicated or established that he has received a major, internationally recognized award, he is required to satisfy at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner has claimed in his petition and on appeal that he meets four of the ten criteria and otherwise qualifies as an individual of extraordinary ability.

The Director concluded that the evidence provided only met two of the claimed evidentiary criteria: 8 C.F.R. § 204.5(h)(3)(iv), participation as a judge of the work of others, and 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles. The record supports the Director’s determination that the Petitioner satisfied these two criteria.

The Director also determined that the Petitioner did not submit sufficient evidence to establish that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(iii), by having material published about him in major media, or 8 C.F.R. § 204.5(h)(3)(v), by making contributions of major significance to his field. Because the Petitioner did not meet three of the ten initial evidentiary criteria, the Director denied the petition without performing a final merits analysis. *See Kazarian*, 596 F.3d 1115, 1119-20; *see generally 2 USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>. On appeal, the Petitioner maintains that his previously submitted evidence is sufficient to establish his eligibility. After reviewing the record,<sup>1</sup> we conclude that the Petitioner meets the criteria at 8 C.F.R. § 204.5(h)(3)(iii), and therefore, meets at least three of the initial evidentiary grounds at 8 C.F.R. § 204.5(h)(3)(i)-(x).

---

<sup>1</sup> While our decision does not mention every document submitted, we have read and considered each one.

To establish eligibility under 8 C.F.R. § 204.5(h)(3)(iii), a petitioner must submit published material about themselves which appeared in professional or major trade publications or other major media, relating to their work in the field in which they seek classification.

Here, the Petitioner initially submitted a 2016 article from China Youth Daily about his 2015 novel [REDACTED]<sup>2</sup>, a 2015 article from China News Service about the same subject, and a 2008 article from the 21st Century Business Herald about the Petitioner's company [REDACTED], as well as information about the latter two publications. The Director issued a request for evidence, stating that the provided articles were not about the Petitioner's work in his field of extraordinary ability, and that furthermore the record did not establish that any of those articles' publications were a professional or major trade publication or other major media. In response, the Petitioner provided articles from China Enterprise News, Xinmin Weekly, The Morning Express, Southern Metropolis Daily, Nan Fang Daily Press, and Technology Entrepreneurship about his writing and business ventures, as well as supporting documentation regarding these publications.

The Director concluded that while the Petitioner had provided published material about his work in his field, the record did not establish that any of this material came from professional or major trade publications or other major media. Citing *Braga v. Poulos*, 2007 WL 9229758, at \*7 (C.D. Cal. Jul. 6, 2007), *aff'd*, 317 Fed. Appx. 680 (9th Cir. 2009), an unpublished federal district court case,<sup>3</sup> the Director stated that the submitted evidence consisted of publications' "self-serving assertions" regarding circulation data, which USCIS was not obliged to accept. However, this conclusion overlooks record evidence that is not from the publications in question, such as the Wall Street Journal article about the 21st Century Business Herald. Additionally, we note that in *Braga*, the "self-serving" statement in question was a claim to be "The #1 Magazine of Mixed Martial Arts!", an assertion which was not supported by concrete information such as the circulation data provided by the Petitioner for several of the publications here.<sup>4</sup> *Id.*

Upon review, we conclude that while it is not apparent that the Petitioner's fiction writing career constitutes work in his field of extraordinary ability, the press coverage of his corporate work is sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Because the Petitioner meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and has overcome the Director's stated reason for denial, we will remand this proceeding so that the Director can conduct a final merits determination under the *Kazarian* framework.<sup>5</sup> The Director may

---

<sup>2</sup> The Petitioner co-authored this novel with B-L-.

<sup>3</sup> Federal district court cases, as well as unpublished cases, are only binding on the parties before them. However, such cases may be cited as persuasive authority. *See, e.g., Matter of K-S-*, 20 I&N Dec. 715, 718-19 (holding that federal district court decisions are not binding on the Board of Immigration Appeals, an administrative appellate authority); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009) (noting that unpublished opinions are not binding precedent but may be persuasive on the legal issues).

<sup>4</sup> Notably, the self-petitioner in *Braga* asked the court to take judicial notice of the relevant magazine's circulation records, which the court noted was an improperly late attempt to supplement the agency record.

<sup>5</sup> While the Petitioner also claims to have made contributions of major significance to his field under 8 C.F.R. § 204.5(h)(3)(v), a detailed discussion of this criterion would not affect the outcome of the decision. We will therefore reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516,

request any additional evidence considered pertinent to the new determination and any other issues. We express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

---

526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).